



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF : Spivak et al.  
FOR : **SPRAY BOOTH METHOD AND APPARATUS**  
SERIAL NO. : 10/805,689  
FILED : March 22, 2004  
LAST OFFICE ACTION : Unknown  
EXAMINER : Unknown  
GROUP ART UNIT : 3752  
ATTORNEY DOCKET NO. : 31399.25504

Akron, Ohio 44311-4407  
January 7, 2005  
Customer #26781

\*\*\*\*\*

**CERTIFICATE OF MAILING**

I hereby certify that this **PETITION FOR FILING BY OTHER THAN ALL OF THE INVENTORS UNDER 37 C.F.R. §1.47(a)** is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the following date.

1/7/05

By: Connie J. Nutter  
Connie J. Nutter

\*\*\*\*\*

**PETITION FOR FILING BY OTHER THAN ALL OF THE INVENTORS UNDER 37 C.F.R. §1.47(a)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

01/13/2005 AWONDAF1 00000056 501210 10805689

01 FC:1463 200.00 DA

It is clear from the direct conversation with Mr. Spivak that he does not intend to sign the Oath and Declaration for continued prosecution of this patent application. Accordingly, the remaining inventors wish to pursue obtaining a patent for this invention. In light of the refusal by Mr. Spivak to sign the Oath and Declaration and in light of the fact that Mr. Spivak has had sufficient time and notice regarding the pending situation, Applicant respectfully submits this Petition For Filing By Other Than All Of The Inventors Under 37 C.F.R. §1.47(a).

Please charge any fees, additional fees due, or credit any overpayment, to Deposit Account No.501210.

Respectfully submitted,

**BROUSE MCDOWELL**

Date

1/7/05

Telephone No.: (330) 535-5711  
Fax No.: (330) 253-8601

598380.1

  
Timothy D. Smith

Reg. No. 50,880  
388 South Main Street, Suite 500  
Akron, Ohio 44311-4407

Applicants, Nicholas J. Mastandrea, Scott R. Thomason, and Timothy Niedel, hereby petition the Commissioner to accept the filing of the above-identified U.S. patent application by other than all of the inventors. An Affidavit signed by Timothy D. Smith, is attached hereto as Exhibit 1 providing proof of the pertinent facts concerning the refusal of the co-inventor, Paul Spivak, to join in the present application for patent.

The name and address of the co-inventor refusing to join in this application is as follows:

**Paul Spivak  
32251 Walker Road  
Avon Lake, OH 44012**

The invention was developed initially by Paul Spivak from Future Tan working in conjunction with Mr. Thomason, Mr. Niedel, and Mr. Mastandrea. At some time after the initial development of the invention, the company, Future Tan, and more specifically, the subject patent application, was sold to MT Holding LLC. Subsequent to the sale of the company and the subject patent application, litigation had developed between Mr. Spivak and Magic Tan. In the process of trying to prosecute the subject patent application, a Notice of Missing Parts was sent from the Patent Office requiring that a signed Oath and Declaration by all of the inventors be supplied. In the course of securing the signatures of all of the inventors, it was determined that Mr. Spivak was refusing to sign as he is one of the inventors. On November 17, 2004, a letter was sent to Mr. Paul Spivak with the Oath and Declaration requesting his signature for continued prosecution of the subject patent application. Subsequently, I spoke with Mr. Paul Spivak on November 23, 2004, where Mr. Spivak indicated that he was unwilling to sign the Oath and Declaration in light of the pending litigation. I inquired with Mr. Spivak as to whether there was any dispute of ownership of the subject patent. Mr. Spivak indicated that Magic Tan was the owner of the patent.



PATENT

Attorney's Docket No. 31399.25504

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**COMBINED DECLARATION AND POWER OF ATTORNEY**

(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL,  
CONTINUATION OR CIP)

=====

As a below named inventor, I hereby declare that this declaration is of the following type: (check one applicable item below)

- ☒ original
- ☐ design
- ☐ supplemental

[NOTE: If the declaration is for an International Application being filed as a divisional, continuation or continuation-in-part application do not check next item; check appropriate one of last three items.]

- ☐ national stage of PCT

[NOTE: If one of the following 3 items apply then complete and also attach ADDED PAGES FOR DIVISIONAL, CONTINUATION OR CIP.]

- ☐ divisional
- ☐ continuation
- ☐ continuation-in-part (CIP)

### **INVENTORSHIP IDENTIFICATION**

[WARNING: If the inventors are each not the inventors of all the claims an explanation of the facts, including the ownership of all the claims at the time the last claimed invention was made, should be submitted.]

My residence, post office address and citizenship are as stated below next to my name, I believe I am the original, first and sole inventor or an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled:

### **SPRAY BOOTH METHOD AND APPARATUS**

### **SPECIFICATION IDENTIFICATION**

The specification of which: (complete (a), (b) or (c))

- (a) ☒ is attached hereto.
- (b) ☐ was filed on \_\_\_\_\_, Serial No. 0 / \_\_\_\_\_, by Express Mail  
No. \_\_\_\_\_; or
- ☐ was filed on \_\_\_\_\_, Serial No. not yet know, by Express Mail  
No. \_\_\_\_\_; or as
- (c) ☐ was described and claimed in PCT International Application No.  
\_\_\_\_\_ filed on \_\_\_\_\_ and as amended  
under PCT Article 19 on \_\_\_\_\_(if any).

[NOTE: Amendments filed after the original papers are deposited with the PTO which contain new matter are not accorded a filing date by being referred to in the declaration. Accordingly, the amendments involved are those filed with the application papers or, in the case of a supplemental declaration, are those amendments claiming matter not encompassed in the original statement of invention or claims. See 37 CFR 1.67.]

### **ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR**

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

☐ In compliance with this duty there is attached an information disclosure statement, 37 CFR 1.97.

**CLAIM PRIORITY TO FOREIGN APPLICATION**

I hereby claim foreign priority benefits under Title 35, United States Code, 119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

(complete (d) or (e))

(d) ☒ no such applications have been filed.

(e) ☐ such applications have been filed as follows.

[NOTE: Where item (c) is entered above and the International Application which designated the U.S. claimed priority check item (e), enter the details below and make the priority claim.]

**EARLIEST FOREIGN APPLICATION(S), IF ANY FILED WITHIN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**

COUNTRY	APPLICATION No.	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 37 USC 119
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

**ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION**

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**CLAIM PRIORITY OF PROVISIONAL APPLICATION**

I hereby claim domestic priority benefits under Title 37, Code of Federal Regulations § 1.78 (a)(3)-(4) of any provisional application(s) filed in accordance with Title 35, United States Code § 111(b) and Title 37, Code of Federal Regulations § 1.51(a)(2) and § 1.53(b)(2).

(complete (f) or (g))

(f) ☐ no such provisional applications have been filed.

(g) ☒ such provisional applications have been filed as follows:

[NOTE: Where item (g) is entered above, enter the details below and make the priority claim.]

DOMESTIC (PROVISIONAL) APPLICATION(S), IF ANY, FILED WITHIN 12 MONTHS PRIOR TO THIS NON-PROVISIONAL U.S. APPLICATION

PROVISIONAL APPLICATION SERIAL NO.	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 37 CFR § 1.78(a)(4)
60/456,744	21 March 2003	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
		<input type="checkbox"/> YES <input type="checkbox"/> NO
		<input type="checkbox"/> YES <input type="checkbox"/> NO
		<input type="checkbox"/> YES <input type="checkbox"/> NO

**CLAIM PRIORITY OF NON-PROVISIONAL APPLICATION**

I hereby claim domestic priority benefits under Title 37, Code of Federal Regulations § 1.78 (a)(1)-(2) of any non-provisional application(s) filed in accordance with Title 35, United States Code § 111(b) and Title 37, Code of Federal Regulations § 1.51(a)(2) and § 1.53(b)(2).

(complete (f) or (g))

(f) ☒ no such non-provisional applications have been filed.

(g) ☐ such non-provisional applications have been filed as follows:

[NOTE: Where item (g) is entered above, enter the details below and make the priority claim.]

DOMESTIC (NON-PROVISIONAL) APPLICATION(S), IF ANY, FILED WITHIN 12 MONTHS PRIOR TO THIS NON-PROVISIONAL U.S. APPLICATION

NON-PROVISIONAL APPLICATION SERIAL NO.	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 37 CFR § 1.78(a)(1)-(2)
		<input type="checkbox"/> YES <input type="checkbox"/> NO
		<input type="checkbox"/> YES <input type="checkbox"/> NO
		<input type="checkbox"/> YES <input type="checkbox"/> NO
		<input type="checkbox"/> YES <input type="checkbox"/> NO

**POWER OF ATTORNEY**

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

Roger D. Emerson, Esq.

33,169

(check the following item, if applicable)

☐ Attached as part of this declaration and power of attorney is the authorization of the above-named attorney(s) to accept and follow instructions from my representative(s).

**SEND CORRESPONDENCE TO**

Timothy D. Smith  
Brouse McDowell, LPA  
106 S. Main Street, Ste. 500  
Akron, Ohio 44308-1471

**DIRECT TELEPHONE CALLS TO:**

Timothy D. Smith  
Phone: (330) 535-5711  
Facsimile: (330) 253-8601

**DECLARATION**

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

**SIGNATURE(S)**

Full name of **inventor**:

**Paul Spivak**

Date: \_\_\_\_\_

Inventor's signature: \_\_\_\_\_

Country of Citizenship: USA

Residence: 32251 Walker Road, Avon Lake, OH 44012

Post Office Address: 32251 Walker Road, Avon Lake, OH 44012

Page 10 of 13

**DECLARATION**

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

**SIGNATURE(S)**

Full name of inventor:

**Nicholas J. Mastandrea**

Date:

1/7/05

Inventor's signature:



Country of Citizenship:

USA

Residence:

14333 Bass Lake Road, Newbury, OH 44065

Post Office Address:

14333 Bass Lake Road, Newbury, OH 44065

**BEST AVAILABLE COPY**

Page 11 of 13

**DECLARATION**

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

**SIGNATURE(S)**

Full name of inventor:

Scott R. Thomason

Date:

1/7/05

Inventor's signature:

Scott R. Thomason

Country of Citizenship:

USA

Residence:

1176 River Run Drive, Macedonia, OH 44056

Post Office Address:

1176 River Run Drive, Macedonia, OH 44056

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Page 12 of 13

**DECLARATION**

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

**SIGNATURE(S)**

Full name of inventor:

Timothy Nidel

Date: 11-23-04

Inventor's signature:



Country of Citizenship:

USA

Residence:

806 Trevitt Circle North, Euclid, OH 44143

Post Office Address:

806 Trevitt Circle North, Euclid, OH 44143

**BEST AVAILABLE COPY**

CHECK PROPER BOX(ES) FOR ANY OF THE FOLLOWING ADDED PAGE(S) WHICH FORM A PART OF THIS DECLARATION

☐ Signature for third and subsequent joint inventors. Number of pages added: \_\_\_\_\_

☐ Signature by administrator (trix), executor (trix) or legal representative for deceased or incapacitated inventor. Number of pages added: \_\_\_\_\_

☐ Signature for inventor who refuses to sign or cannot be reached by person authorized under 37 CFR 1.47. Number of pages added: \_\_\_\_\_

\*\*\*

☐ Added pages to combined declaration and power of attorney for divisional, continuation, or continuation-in-part (CIP) application. Number of pages added: \_\_\_\_\_

\*\*\*

☐ Authorization of attorney(s) to accept and follow instructions from representative

\*\*\*

**If no further pages form a part of this Declaration then end this Declaration with this page and check the following item.**

☒ This declaration ends with this page



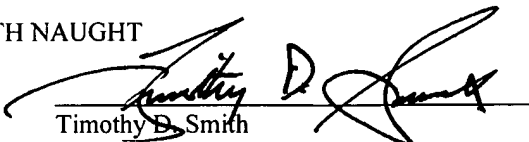


**AFFIDAVIT OF TIMOTHY D. SMITH**

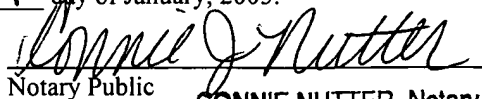
Now comes Timothy D. Smith, being first duly sworn, states as follows:

1. My name is Timothy D. Smith.
2. I am a patent agent with Brouse McDowell, 388 South Main Street, Suite 500, Akron, Ohio 44311-4407.
3. Brouse McDowell serves as practioner for the Applicants ("Applicants").
4. I am one of the agents responsible for case serial no. 10/805,689, entitled SPRAY BOOTH METHOD AND APPARATUS ("Patent Application").
5. I determined that Paul Spivak, Nicholas J. Mastandrea, Scott R. Thomason, and Timothy Niedel are co-inventors for the Patent Application.
6. The invention was developed initially by Paul Spivak from Future Tan, an Ohio corporation, working in conjunction with Mr. Thomason, Mr. Niedel, and Mr. Mastandrea.
7. At some time after the initial development of the invention, the company, Future Tan, and more specifically, the subject patent application, was sold to MT Holding LLC.
8. Subsequent to the sale of the company and the subject patent application, litigation had developed between Mr. Spivak and Magic Tan.
9. In the process of trying to prosecute the subject patent application, a Notice of Missing Parts was sent from the Patent Office requiring that a signed Oath and Declaration by all of the inventors be supplied.
10. In the course of securing the signatures of all of the inventors, it was determined that Mr. Spivak was refusing to sign as he is one of the inventors.
11. On November 17, 2004, a letter was sent to Mr. Paul Spivak with the Oath and Declaration requesting his signature for continued prosecution of the subject patent application.
12. Subsequently, I spoke with Mr. Paul Spivak on November 23, 2004, where Mr. Spivak said that he was unwilling to sign the Oath and Declaration in light of the pending litigation.
13. I inquired with Mr. Spivak as to whether there was any dispute of ownership of the subject patent.
14. Mr. Spivak admitted that Magic Tan was the owner of the patent.
15. It is clear from the direct conversation with Mr. Spivak that he does not intend to sign the Oath and Declaration for continued prosecution of this patent application. Accordingly, the remaining inventors wish to pursue obtaining a patent for this invention. In light of the refusal by Mr. Spivak to sign the Oath and Declaration and in light of the fact that Mr. Spivak has had sufficient time and notice regarding the pending situation, Applicant respectfully submits this Petition For Filing By Other Than All Of The Inventors Under 37 C.F.R. §1.47(a).

FURTHER AFFIANT SAYETH NAUGHT

  
Timothy D. Smith

Sworn and subscribed to me this 7<sup>th</sup> day of January, 2005.

  
Notary Public

CONNIE NUTTER, Notary Public  
State of Ohio

My Commission Expires April 14, 2009